IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 15128 of 2001

Between:

Kondrakata Achutaramaiah S/o. Venkata Ramanujaiah
R/o. Roypet, Opp: Blind Children Hostel, Narsapur, West Godavari District.

..... PETITIONER

AND

1 The A.P. Co-operative Housing Societies Federation Ltd., Rep. by its Recovery Officer,Labbipet, Vijayawada.
2 The Narsapur Co-Op., Buildings Societies Ltd., Rep. by its Person in Charge/President, Narsapur, West Godavari District.
(The Cause Tittle of R1 & R2 are amended as per Court Order Dt. 7.8.2001 in WPMP 19357/2001)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ order or orders more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in issuing the impugned Notice dt. 22.4.2001 for claim of Rs.l,86,197.27 ps.issued by the 1st respondent for realisation of amount from the petitioner is illegal, arbitrary, ultra vires and against to the principals of natural justice and consequently set aside the notice dt. 22.4.2001 of the 1st respondent as arbitrary, illegal, ultra vires, principles of natural justice and violative of petitioners right guaranteed under Article 14 of Constitution of India.

Counsel for the Petitioner: Mr.C.KODANDA RAM

Counsel for the Respondent No.1: Mr.T.Srikanth Reddy

Counsel for the respondent No.2: Y.Chandrasekhar

The Court made the following :

O R D E R :

The petitioner is the member of the second respondent-Society. He has obtained loan of Rs.45,000/- on 09.03.1982 for construction of the house from the first respondent-Society. It is stated that as per the terms of the loan, the said amount has to be repaid in 20 equal instalments at the rate of Rs.2,250/- along with accrued interest thereon at 9% per annum, in default, penal interest @ 1% per annum will be levied. It is stated that the second respondent released the said loan amount in two instalments i.e. Rs.30,170/- and Rs.7,680/- after deducting an amount of Rs.3,820/- towards share capital.

According to the petitioner he has promptly paid the principal amount of Rs.9,000/- and accrued interest thereon. While so, the petitioner received a demand notice dated13.02.1988 calling upon the petitioner to a sum of Rs.11,250/- and accrued interest of Rs.13,697/- and penal interest of Rs.1,606/- totalling Rs.26,548.60 ps. and pending the said demand notice, another demand notice was issued on 28.05.1988 to pay a sum of Rs.33,144.70 ps. on different heads without clarifying the earlier notice of demand and there is no explanation for issuing two different notices. Therefore, the petitioner requested the respondents to furnish the correct and extract copy of the due amounts and statement of account so as to enable him to pay the balance amount. But, without furnishing any particulars of the said two demand notices, the District Cooperative Sub-Registrar served another notice on the petitioner on 23.08.1988 directing to pay Rs.22,768.78 ps. and opened a case against the petitioner vide bearing No. 49/87-88. Then the petitioner constrained to issue a notice under Section 126 of the Cooperative Societies Act calling upon the respondents to furnish correct particulars of the statement of account. But the respondents neither gave reply nor furnished any particulars of demand notices. Then the petitioner got issued another notice to the respondents on 08.03.1991 repeating the contents of the notice dated 09-08-1989. Therefore, the petitioner was constrained to file a Writ Petition No.5636 of 1991 on the file of this Court seeking a direction to furnish the correct statement of accounts in pursuant to the demand notices and also under Case No.49/87-88 and this Court at the admission stage disposed of the said Writ Petition on 19.04.1991 directing the first

respondent to dispose of the Case No.49/87-88 within three months. It is stated that instead of disposing of the pending Case No.49/87-88, the first respondent issued another notice in Case No.1 of 1991 calling upon the petitioner to pay a sum of Rs.37,664.10 ps.

It is the case of the petitioner that the respondents have closed the earlier case No.49/87-88 and reopened the Case No.1 of 1991 under Section 71(1) of the Cooperative Societies Act.

In spite of repeated requests and demands to furnish statement of account, the respondents have not complied with the said request and therefore the petitioner filed an appeal before the Cooperative Tribunal, Vijayawada in O.A.No.304 of 1996 questioning the reopening of the said Case No.1 of 1991.

It is the case of the petitioner that the demand raised by the respondents for a sum of Rs.2,12,490/- was without any basis whatsoever and the deposited amount of Rs.36,000/- made by him on 17.02.1992 to the credit of
C.T.A.No.2 of 1991 towards the principal amount of outstanding due as on 01.01.1988 has not been taken into account. However, the entire controversy has been resolved in O.A.No.304 of 1996 (C.T.A.No.2 of 1991) by the order dated 31.07.2000 on the file of the A.P. Cooperative Tribunal, Vijayawada wherein the Tribunal observed that as per the ledger account of the respondents'-Society, the petitioner has not paid the instalments from 1984 to 1986 and the respondents without disposing of the earlier case, initiated the fresh proceedings on the same cause of action without any justification. As such, the certificate issued by the respondents as regards the amount said to have been due has been set aside and the respondents are directed to reopen the earlier proceedings and make fresh statement of account from the date of disbursement of the loan till the date of filing of the Writ Petition No.5656 of 1991, dated 19.04.1991 and further directed to calculate the amount due from the petitioner till the date of disposal of the Writ Petition. Accordingly, the respondents are directed to adjust the amount of Rs.36,000/- paid by the petitioner during the pendency of the appeal and calculate the balance amount, if any, from the petitioner due as on 19.04.1991. Accordingly, the said appeal was disposed of directing the first respondent to reopen the Case No.49/87-88 and make a fresh statement of account from the date of disbursement till the date of disposal of the W.P.No.5636 of 1991, dated 19.04.1991 by crediting the amounts already paid by the petitioner and collected the balance amount and accordingly the

impugned certificate in Case No.1 of 1991, dated 19.04.1991 was set aside.

Without complying with the said order of the Tribunal, the Recovery Officer, A.P. Housefed, West Godavari Dist.II, Vijayawada Region issued the impugned notice, dated 22.04.2001 demanding a sum of Rs.1,86,197.27 ps. giving the particulars of the said amount as Rs.40,348/- towards principal, Rs.41,003/- towards interest, Rs.1,02,879.31 ps. towards penal interest, Rs.1,790.60 ps. towards L.I.C. and Rs.176.36 ps. towards L.I.C.(Levy). There is no reference of the Tribunal order and the respondents without furnishing any particulars whatsoever for the true accounts and without re-opening the Case No.49/87-88 the impugned order dated 31.07.2000 has been passed which is contrary to the said order of the A.P. Cooperative Tribunal, Vijayawada made in O.A.No.304 of 1996 (C.T.A.No.2 of 1991).

Accordingly, the Writ Petition is allowed and the impugned notice dated 22.04.2001 issued by the first respondent is set aside. However, it is open for the respondents to proceed with the Case No.49/87-88 in terms of the order of the Tribunal within Eight Weeks from the date of receipt of a copy of this order and if they do not want to implement the order of the Cooperative Tribunal, the documents filed by the petitioner towards security for obtaining the loan shall be returned after expiry of the said eight weeks. There shall be no order as to costs.

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V. ESWARAIAH, J

Dated:14-03-2005

Ccm

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the Fourteenth day of March, Two thousand and Five.

ASSISTANT REGISTRAR

To

1. The Recovery Officer, A.P. Co-operative Housing Societies Federation Ltd., Labbipet, Vijayawada.

2. The Person-in-Charge/President, Narsapur Co-Op., Buildings Societies Ltd., Narsapur, West Godavari District.

3. The Chairman, A.P.Cooperative Tribunal, Vijayawada.

4. Two CD copies.